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cs 7952 / cs 7952

BEFORE THE HONOURABLE HIGH COURT OF CHHATTISGARH

AT BILASPUR

Single Bench

SECOND APPEAL NO. 493 OF 2005

APPELLANT : Paras Nath Rai; aged about 65 years; Son of Late Shri Bramhadeo Rai, Caste Rajpoot; Resident of Rajwada Campus, Subhash Ward Jagdalpur; District Bastar; (C.G.).

PLAINTIFF

P.R. No. 2787/05
Presented by Shri Anil Gupta
dated 27/10/05

VERSUS

RESPONDENTS : 1. Shekh Fareed; aged about 39 years; Son of Shri Safar Ali; Resident of In front of Das Pathology (Since Closed); Keoramunda Ward Jagdalpur; District Bastar; (C.G.).

DEFENDANTS

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2. State of Chhattisgarh; Through: Collector; Bastar District; Jagdalpur; (C.G.).

SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE, 1908

HIGH COURT OF CHHATTISGARH : BILASPUR

Second Appeal No. 483 of 2005

Appellant/ Plaintiff : **Parasnath Rai**

Vs.

Respondents/ Defendants : **Shekh Fareed and another**

Appellant/Plaintiff by Shri R.N. Jha, Advocate.
State/defendant No.2 by Shri Bhaskar Pyasi, P.L.

JUDGMENT
(Delivered on 05/01/2006)

Dhirendra Mishra, J

This is the plaintiff's second appeal as the suit for declaration that the sale deed in favour of the defendant is void, bogus, illegal and not binding upon the plaintiff, declaration of title and perpetual injunction and confirmation of possession was dismissed by the trial Court and the appeal preferred by the appellant has been further dismissed by the impugned judgment and decree dated 11.08.2005 by the learned lower appellate Court. (Parties hereinafter shall be referred to as per their description before the trial Court.)

2. The case of the plaintiff before the trial Court was that the plaintiff and his parents are the residents of Bihar and his father had purchased the suit land from one Suresh Datt Jha, resident of Jagdalpur for a consideration of Rs. 4,000/- through registered sale deed dated 30th January 1970 and after purchase of the suit land his father and after his father he was in possession of the suit land and he had sown paddy crop in the year 1999. When the defendant interfered at the time of harvesting claiming himself to be owner of the suit land stating that they had purchased the suit land from the father of the plaintiff namely Brahmdv Rai for a consideration of Rs.7,100/-, the plaintiff

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obtained certified copy of the revenue papers and the sale deed and learnt that the defendants have got executed a sale deed from his father in the year 1973 and it also contains the consent letter singed by the plaintiff. Thus the above suit was filed by the plaintiff claiming that the document in question has been fraudulently executed through fabricated signatures of his father and also by his fabricated consent deed as no sale deed was ever executed by his father and no such consent letter was ever signed by him. In the alternative, it was pleaded that the plaintiff as also his father were in continuous peaceful and open possession over the suit land and the defendants never objected to their possession and therefore they have perfected their title by adverse possession.

3. The defendant denied the averments of the plaint in his written statement and submitted that the father of the plaintiff sold the suit land for a consideration of Rs.7,100/- on 23.08.1993 after obtaining the total consideration and since then the possession of the suit land was handed over to the defendant and he is in possession and the plaintiff had given a written consent for execution of the sale deed. After purchasing the land the defendant had developed the land, installed electric irrigation pump sets and the plaintiff was never in possession of the suit land. The other allegation of the plaint was also specifically denied by the defendant. The defendant further denied that the plaintiff is in possession since long and therefore he has perfected his title by adverse possession.

4. On the basis of pleadings of the respective parties, issues were framed by the trial Court and the suit was dismissed with cost by recording a finding that the plaintiff has failed to prove his title or possession over the suit land, the sale deed dated 01.09.1973 is neither void nor the same is not binding upon the plaintiff and that the perfection of title through adverse possession has not been proved.

5. The plaintiff preferred appeal against the above judgment and decree and the same was also dismissed by the learned lower appellate Court by the impugned judgment and decree.

6. Learned counsel for the appellant has assailed the above judgment firstly on the ground that the defendant was claiming title on the basis of registered sale deed, however, the defendant has failed to prove the execution of the sale deed in question in accordance with law and therefore, the Courts below ought to have held that the plaintiff is the owner and title holder of the suit land.

7. The learned lower appellate Court after analyzing the oral and documentary evidence available on record has arrived at the conclusion that the plaintiff has failed to prove that the registered sale deed in favour of the defendant does not bear the signature of his father and himself as his father used to put his thumb impression and he never signed as he did not examine any witness in support of his contention. On the contrary, D.W.1 S. Safar Ali has categorically stated that at the time of execution of sale deed of Ex.P/1 Brahmdev Rai had handed over possession of the suit land as also the other documents relating to the suit land being the sale deed executed by Suresh Datt Jha in favour of Brahmdev Rai and the *rin pustika*-I & II. Thus the Courts below on the basis of registered sale deed executed in the year 1973 arrived at the conclusion that the defendant after purchasing the suit land dug bore well, obtained electric connection and installed electric pump for irrigation purposes and as such developed the land and the plaintiff has failed to prove that the sale deed was not executed by his father Brahmdev Rai.

8. Both the Courts below have recorded a concurrent finding of fact that the plaintiff has failed to prove that the documents of Ex.P/1 and D/2 are false and fabricated and as the sale deed in question is a registered sale deed executed by father of the plaintiff, the same is binding upon the plaintiff and on the basis of above discussions, the

Courts below have held that the plaintiff is not the possessor and title holder of the suit land.

9. Learned counsel for the appellant/plaintiff has further argued that the plaintiff has filed and proved the documents of Ex.P/2 to P/9 which are certified copy of the revenue records by which it is established that the plaintiff and his father are the owners of the suit land and they are in possession over the suit land till 1999. The Courts below ought to have drawn a presumption on the basis of Khasra entries in the revenue records in favour of the plaintiff, however, the Courts below without considering the above documents have erroneously recorded a finding that the plaintiff was never in possession of the suit land after 1973 which is contrary to the evidence available on record and as such perverse.

10. The presumption attached to the Khasra entries in the revenue records is rebuttable presumption and the Courts below on the basis of oral evidence available on record, have recorded a concurrent finding of fact that the defendant is in possession of the suit land after they purchased the same from father of the plaintiff and the above finding of fact cannot be questioned in the second appeal.

11. Learned counsel for the appellant relying upon the judgment of M.P. High Court reported in **1990(II) M.P.W.N. 8** in the matter of **Gajaiyya V. Har Prasad** submits that the oral evidence is not conclusive proof of any fact and where the parties try to support their respective cases by oral evidence, the documentary evidence becomes important and particularly Khasra entries have presumptive value under Section 117 of the Land Revenue Code.

12. The Courts below have arrived at the conclusion on the basis of proper appreciation of evidence available on record that the plaintiff was never in possession of the suit land. This finding is based on proper appreciation of oral evidence adduced by the plaintiff himself and is also based on certain other circumstances which have been

discussed in detail in the impugned judgment. Therefore, the citation relied upon by learned counsel for the appellant has no application in the instant case.

13. Thus on the basis of aforesaid discussions, the appeal being devoid of any substance deserves to be dismissed at the motion stage itself and is accordingly dismissed.

Sd/-
Dhirendra Mishra
Judge
05/01/2006

Khan